

ORIGINAL

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MED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

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SEP 11 2003  
 to 10 AM  
 at o'clock and min. M.  
 WALTER A. Y. H. CHINN, CLERK

Attorneys for Plaintiff  
 UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 03-00106 DAE
	)	
Plaintiff,	)	UNITED STATES' OPPOSITION TO
	)	DEFENDANT'S MOTION TO SUPPRESS;
vs.	)	EXHIBIT 1; CERTIFICATE OF SERVICE
	)	
JOHN GILBREATH,	)	
	)	
	)	
Defendant.	)	DATE: September 18, 2003
	)	TIME: 9:00 a.m.
	)	JUDGE: Hon. David A. Ezra

UNITED STATES' OPPOSITION TO  
DEFENDANT'S MOTION TO SUPPRESS

Defendant Gilbreath consented to a search of his apartment on December 19, 2002 by agents of the Bureau of Alcohol, Tobacco and Firearms. The defendant signed a written consent to search form. The federal agents did not refuse to allow the defendant to take his minor child outside the apartment unless he signed the written consent form. See Exhibit 1.

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defendant. One uniformed Honolulu Police officer had been standing at the door of the apartment. The defendant said he had a fake machine gun and walked out of the agent's sight. Agent Lowe moved briefly to watch where the defendant was going and what he was doing and pulled his shirt up and put his hand on his weapon. Agent Lowe had seen a revolver on a shelf in the apartment as the defendant walked away. The defendant returned with a replica "grease gun" machine gun. Agent Lowe removed his hand from his weapon and pulled his shirt back down. The other agents entered the apartment and did a protective sweep to ascertain who else was inside and if there were any visible threats to their safety. The defendant initially denied possessing any drugs inside the apartment. The agents then explained the consent to search form to the defendant. The defendant was allowed to read the form and the form was read to him. The defendant signed and initialed the form giving the agents consent to search.<sup>1</sup>

The defendant was not told he could not move his child to a neighbor's apartment unless he gave consent to search. The agents talked to the defendant outside the apartment while other agents searched the apartment. The defendant smoked a cigarette and sat in a chair outside during the search and was told he was

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<sup>1</sup> The defendant also later signed another written consent form allowing the agents to search his Nissan automobile.

free to leave and not under arrest.

During a search of the apartment's bathroom, the agents discovered a container of marijuana under some towels. The defendant said it was not his marijuana. One of the agents then asked the defendant if the container was not his then the agents would not find the defendant's fingerprints on the container. The defendant then admitted that it was his marijuana and explained he was a habitual marijuana user. Agents discovered eight firearms in the defendant's apartment (5 long guns and 3 handguns).

Conclusion

The agent's search of the defendant's residence was consensual. The defendant's motion to suppress should be denied.

DATED: September 10, 2003, Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

By T.Muehleck  
THOMAS MUEHLECK  
Assistant U.S. Attorney



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
CONSENT TO SEARCH

Case Number

787025-03-WJ

*JAG.* I understand that I have a right to refuse to give my consent to a search and may demand that a search warrant be obtained prior to any search of the person or property described below.

*JAG.* I understand that any contraband or evidence of a crime found during the search can be seized and used against me in any court of law or other proceeding.

*JAG.* I understand that I may consult with an attorney before or during the search.

*JAG.* I understand that I may withdraw my consent to this search at any time prior to the search's termination.

*JAG.* This consent to search has been given voluntarily without promises, threats, coercion or force of any kind whatsoever.

*JAG.* I have read the above statement of rights, understand these rights, and hereby authorize agents of the Bureau of Alcohol, Tobacco and Firearms to conduct a complete search of the property described below.

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DESCRIBE VEHICLE, PREMISES, PERSON, OR ITEMS TO BE SEARCHED.

1555 Wilder Ave. Apartment 3  
Honolulu, HI 96822

*Nothing follows*

**EXHIBIT**

*John Dilbeck*

---

SIGNATURE OF CONSENTEE

---

DATE 12/19/02

---

SIGNATURE OF SPECIAL AGENT

---

DATE 12/19/02

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SIGNATURE OF WITNESS(ES)

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DATE 12-19-2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following person(s) :

DONNA GRAY  
300 Ala Moana Blvd., Room 7-104  
Honolulu, HI 96850

Counsel for defendant  
John Gilbreath

DATED: September 11, 2003, at Honolulu, Hawaii.

Ravena A. King